

DISCUSSION

On the Ethics of Piracy: Challenging the Orthodox View

JAMES PATTISON — 28 October, 2014



The use of force against pirates is politically uncontroversial. As I outline in more detail in my recently published [article](#) in the *Review of International Studies* (on which this blog draws), on the ‘Orthodox View’ of piracy those using force against the pirates have right on their side. On the Orthodox View, the pirates are the aggressors who lack the authority to declare and to conduct force. They use force without just cause to steal property from the international shipping companies and others and, in doing so, take innocent hostages, all for their own enrichment. Whereas the pirates act impermissibly, those using force against the pirates act with moral justification. They help the innocent subjects of the pirate attacks to retain what is rightfully theirs by deterring attacks or by using force only against those liable to attack anyway.

The Orthodox View is the prevailing view of pirates in general in the international system. The war against the Somali pirates is politically accepted, attracting numerous UN Security Council resolutions, and there has even been a coordination of efforts between states that otherwise have hostile relationships.

Challenging the Orthodox view

It strikes me as surprising how little the international community’s response to piracy has been generally problematised. If anything, the biggest criticism of it has been that it has not been robust *enough*. I think that we should generally treat with great scepticism the denouncement and use of force by the strong and powerful of the international system against those who are marginalised, impoverished, and vulnerable. This alone should give us reason to be somewhat sceptical of the Orthodox View.

Indeed, it seems that the Orthodox View is mistaken. It is certainly plausible that *certain* Somali Pirates, particularly during the early stages of the development of piracy in the Gulf of Aden, acted permissibly, that is, in accord with the requirements of Just War Theory applied to Somali piracy. Of course, it is tricky to establish the hard facts of the case—to the extent that there are any—given the general paucity of empirical information.

‘Justa piratica’

To consider whether pirates acted permissibly, we can, first, set out the conditions that

pirates would have to meet in order to be ethical. These are largely the standard conditions of Just War Theory applied to piracy (note that Just War Theory is not limited to states; one of the most notable recent shifts has been to apply to it to other actors such as pirates (in this paper) and *guerrillas*). I call these the principles of '*justa piratica*'. Pirates would need to meet conditions of (1) just cause (i.e. their basic needs must be unfulfilled), (2) right intention (i.e. they should predominantly intend to resort to piracy for the right reasons and not for the wrong ones), (3) last resort (i.e. they should pursue other nonviolent options first), (4) proportionality (i.e. their resort to piracy needs to do more good than harm overall), and (5) discrimination (i.e. they should use force only against those who are liable).

Once we have identified the conditions of *justa piratica*, we can then consider whether the Somali pirates or others (e.g. in the Gulf of Guinea) meet these conditions. I think that there is reason to hold that *some* Somali pirates—even if only a *handful*—may have done so. The extreme poverty of much of Somalia means that many pirates may have lacked their basic needs and so met (1) just cause. It seems that some pirates may have predominantly intended to tackle their impoverishment and so possess (2) right intention. In terms of (3), last resort, it seems that there were very few *reasonable* alternatives for some pirates, given the lack of employment opportunities and impoverishment of Somalia. There were also reports that piracy helped to improve the basic needs of many individuals in the coastal areas of Somalia and so it may have met (4), the requirement of proportionality.

Perhaps the most contestable issue is whether some Somali pirates used force (5) only against those who are liable to attack (I consider this in much more detail in the [article](#), pp. 644–9). I imagine that this is where *most* pirate attacks would be ruled out as impermissible, given that the crew of the hijacked cargo ships may themselves also be to some extent innocent. Notwithstanding, there may be exceptions. For one, there may have been fishing vessels whose crew were culpable for illegal fishing or toxic dumping and so liable to attack. In addition, against a strong account of discrimination, individuals need not be fully culpable for it to be permissible to use force against them.

Even if they are liable only for *smaller* harms, and not to be hijacked, it still may be permissible to use force against them on occasion if the only other option is that those who are *fully innocent* bear *all* the harm. To see this, suppose that you and your family are impoverished and will die either now or in the near future from starvation and/or preventable diseases. Suppose further that, by maintaining the unjust system that keeps you very poor, your neighbour is in part responsible for your predicament. The only way that you can get help is to use force against him—by kidnapping him and holding him to ransom. The choice is either you die or he is kidnapped? It seems that you might be able to kidnap him, particularly if we add that liberal political philosophy generally holds that one can favour one's interests at least to *some*, small degree over the interests of others.

Some Pirates Act Permissibly

My point, then, is that it is certainly conceivable—and perhaps likely—that *certain* Somali Pirates may have acted permissibly. To reiterate, it is difficult to establish this *for sure*, given the general dearth of first-hand empirical information and reliable reports. My claim is therefore tentative, as should any other, opposing claims in this regard (e.g. that *all pirates* act and have acted impermissibly). It should also be noted that accepting that certain pirates may have been acting permissibly is consistent with holding that *many did not*. All that is needed to cast doubt on the Orthodox View is that *a few pirates might* have acted permissibly.

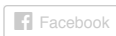
There has been a violent response to the problem of piracy, seemingly conditioned by the view of piracy as inherently immoral. Little, if any, consideration is given to the potential the pirates may themselves be acting permissibly and be, in effect, nonculpable. I think we should generally avoid violence against those who are innocent. What the Orthodox View misses is that those who are innocent may not simply be some of those subject to the pirate attacks, but also potentially some of the pirates themselves. The implications of this are clear: the international community should be more careful in its use of force against pirates, given the risk of harming potentially innocent pirates.

A reponse to this post is published [here](#).

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